

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

**MICHAEL MORTON, et al.,**

**Plaintiffs,**

**VS.**

D.R. Horton, et al,

**Defendants.**

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**CIVIL ACTION NO. 22-0091-JB-N**

## ORDER

This action is before the Court on Defendant D.R. Horton, Birmingham’s Motion to Stay and Compel Arbitration (Doc. 33) and Plaintiffs’ Motion for Leave to File First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2) (Doc. 95). Both motions are ripe for adjudication.

Per the Plaintiffs' Motion for Leave to File First Amended Complaint, Defendants Bethel Engineering and The City of Orange Beach, Alabama (to the extent they have any remaining claims) consented to Plaintiffs' request and Defendants, D.R. Horton, Inc. ("DRHI") and D.R. Horton, Birmingham ("DRHB") did not. (*Id.*) On February 1, 2023, DRHI and DRHB filed a response which stated, in pertinent part: "DRHI and DRHB would consent to the Motion for Leave to File the First Amended Complaint, specifically as to the form of the First Amended Complaint submitted as DOC. 95-1". (Doc. 99). Accordingly, Plaintiffs' Motion for Leave to Amend is **GRANTED**. Plaintiffs are **ORDERED** to file their Amended Complaint (Doc. 95-1) **by no later than**

**March 3, 2023.**<sup>1</sup>

Prior to the filing of the above Motion for Leave to Amend, DRHB also filed a Motion to Stay and Compel Arbitration (Doc. 33) which was initially opposed by Plaintiffs (Doc. 42). On January 9, 2023, however, Plaintiffs filed a Motion to Withdraw Objection to Arbitration and Consent to Defendant D.R. Horton, Inc. – Birmingham’s Motion to Stay and Compel Arbitration of Money Damages Claims, which is also pending before this Court. (Doc. 96). Plaintiffs’ motion to withdraw and consent (Doc. 96) is hereby **GRANTED** and accordingly, DRHB’s Motion to Compel Arbitration (Doc. 33) is **GRANTED**. However, as indicated above, Plaintiffs have been granted leave to amend their complaint. The Court appreciates the Notice of Compliance filed by DRHI and DRHB (Doc. 100), however, to ensure that the parties agree as to which Plaintiffs (per the Proposed Amended Complaint) are subject to arbitration and to ensure clarity of the record, the Parties are **ORDERED** to file a Joint Notice indicating which parties and claims will be subject to Arbitration and otherwise stayed in this Court **by not later than March 24, 2023**. The Defendants are additionally **ORDERED** to file Renewed Motions to Dismiss (to the extent they wish to do so) based off the operative complaint **by not later than March 31, 2023**, after which a briefing schedule will be entered.

**DONE and ORDERED** this 24th day of February, 2023.

/s/ JEFFREY U. BEAVERSTOCK  
CHIEF UNITED STATES DISTRICT JUDGE

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<sup>1</sup> DRHI and DRHB’s Response appears to seek this Court’s approval to a “proposed consent approach” with respect to service of DRHI whereby DRHI would agree to accept service of the amended pleading subject to a responsive pleading deadline set by the Court. To the extent that approval is necessary, if the parties agree to this approach, the Court has no objection.